Supreme Court, U.S.
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No. 15-6092

IN THE

Supreme Court of the United States

RICHARD MATHIS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED SEPTEMBER 15, 2015
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DOCKET ENTRIES
No. 14-2396 (8th Cir.)*

06/16/2014	CRIMINAL case docketed. ...
	* * *
07/10/2014	RECORD FILED—SEALED PSI REPORT, 1 volumes, ..., Comments: 1 volume, 3 copies of Sealed PSI Report, Sealed Judgment and Sealed Statement of Reasons, ...
07/10/2014	RECORD FILED—PLEA TRANSCRIPT, 1 volumes, ... Dt. of Proceeding/Hearing: 01/21/2014 ...
07/10/2014	RECORD FILED—SENTENCING TRANS, 1 volumes, ... Dt. of Proceeding/Hearing: 01/03/2014 ...
	* * *
07/23/2014	RECORD FILED—EXHIBITS, ... Comments: 1 envelope containing Defendant's Suppression hearing Exhibits A and B and Sentencing Exhibits A-P ...
	* * *
08/21/2014	BRIEF FILED—APPELLANT BRIEF filed by Mr. Richard Mathis. w/service 08/21/2014 , ... Appellee brief due on 09/11/2014. ...
08/21/2014	ADDENDUM of APPELLANT FILED by Appellant Mr. Richard

* Entries edited for brevity and clarity.

Mathis , w/service 08/21/2014 ...

* * *

09/10/2014 BRIEF FILED—APPELLEE BRIEF filed by United States of America, w/service 09/10/2014 , ... Richard Mathis's reply brief due 09/17/2014. ...

09/10/2014 ADDENDUM of APPELLEE FILED by Appellee United States of America , w/service 09/10/2014 ...

* * *

11/07/2014 SET FOR ARGUMENT—CASE PLACED ON CALENDAR—*for Argument in St. Paul on Tuesday, December 09, 2014.* To be heard before Judges James B. Loken, Kermit E. Bye and Lavenski R. Smith in Division I. ...

* * *

12/05/2014 28(j) citation filed by Appellant Mr. Richard Mathis w/service 12/05/2014—FOR CAL ...

12/05/2014 ARGUMENT STATUS CHANGED—Argument to No Argument ...

12/09/2014 CASE SUBMITTED On the briefs without oral argument (on calendar) before Judges James B. Loken, Kermit E. Bye, Lavenski R. Smith in St. Paul ...

05/06/2014 28(j) citation filed by Appellant Mr. Richard Mathis w/service 05/06/2015—FOR CAL ...

05/12/2015 OPINION FILED—THE COURT: James B. Loken, Kermit E. Bye and

	Lavenski R. Smith AUTHORING JUDGE: Lavenski R. Smith (PUBLISHED) ...
05/12/2015	JUDGMENT FILED—The judgment of the Originating Court is AFFIRMED in accordance with the opinion.. JAMES B. LOKEN, KERMIT E. BYE and LAVENSKI R. SMITH ...
05/26/2015	PETITION for enbanc rehearing and also for rehearing by panel filed by Appellant Mr. Richard Mathis w/service 05/26/2015 ...
06/23/2015	JUDGE ORDER: Denying ... petition for enbanc rehearing filed by Appellant Mr. Richard Mathis. The petition for panel rehearing is also denied. Judge Kelly did not participate in the consideration or decision of this matter. ... PUBLISHED ORDER. ...
06/30/2015	MANDATE ISSUED. ...

* * *

DOCKET ENTRIES
No. 13-cr-33 (S.D. Iowa)*

Date Filed	#	Docket Text
06/18/2013	1	SEALED INDICTMENT as to Richard Mathis on count one. ...
		* * *
06/18/2013		Case unsealed as to Richard Mathis. ...
		* * *
01/21/2014	44	PLEA AGREEMENT as to Richard Mathis. ...
		* * *
05/06/2014	55	SENTENCING MEMORANDUM/BRIEF by USA as to Richard Mathis (Attachments: # 1 Exhibit 1-6) ...
		* * *
05/27/2014	57	FINAL PRESENTENCE INVESTIGATION REPORT (Sealed) as to Richard Mathis (Attachments: # 1 DEFENSE final letter, # 2 GOVT final letter) ...
05/29/2014	58	SENTENCING MEMORANDUM/BRIEF by Richard Mathis
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* Entries edited for brevity and clarity.

to the BOP for a term of 180 months on Count 1. The Def't will be placed on supervised release for five years for Count 1 of the Indictment. $100.00 Special Assessment. ...

06/03/2014	60	JUDGMENT IN A CRIMINAL CASE as to Richard Mathis. Count 1, Def't is sentenced to the BOP for a term of 180 months on Count 1. The Def't will be placed on supervised release for five years for Count 1 of the Indictment. $100.00 Special Assessment. Signed by Judge John A. Jarvey on 6/3/2014. ...

* * *

06/12/2014	64	NOTICE OF APPEAL by Richard Mathis re 60 Judgment. ...

* * *

06/16/2014	68	AMENDED JUDGMENT as to Richard Mathis,, Count 1, Def't is sentenced to the BOP for a term of 180 months on Count 1. The Def't will be placed on supervised release for five years for Count 1 of the Indictment. $100.00 Special Assessment. Signed by Judge John A. Jarvey on 6/16/2014. ...

* * *

06/30/2014	72	TRANSCRIPT of Proceedings as to Richard Mathis re 43 Change of Plea Hearing, held on 1-21-14 before Judge Jarvey. ...

06/30/2014	73	TRANSCRIPT of Proceedings as to Richard Mathis re 59 Sentencing, held on 6-3-14 before Judge Jarvey. ...

* * *

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06/30/2015	77	MANDATE of USCA as to Richard Mathis ...

* * *

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 14-2396

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

RICHARD MATHIS,
Defendant-Appellant.

Appeal from United States District Court
for the Southern District of Iowa—Davenport

Submitted: December 9, 2014
Filed: May, 12, 2015

Before LOKEN, BYE, and SMITH, Circuit Judges.

SMITH, Circuit Judge.

Richard Mathis was convicted for being a felon in possession of a firearm and received an enhanced sentence under the Armed Career Criminal Act (ACCA), which applies to felons guilty of possession of a firearm who have three prior violent felony convictions. The district court[1] also imposed special conditions of supervised release usually reserved for convicted sex offenders. Mathis appeals his sentence and the special conditions of supervised release. We affirm.

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[1] The Honorable John A. Jarvey, United States District Judge for the Southern District of Iowa.

I. *Background*

On February 15, 2013, a 15-year-old boy named K.G. went missing. While missing, the boy stayed at Mathis's house. K.G. alleged that, during this time, Mathis forcibly molested him. On February 25, 2013, police officers tracked K.G.'s cell phone to Mathis's house. Mathis's girlfriend, who also stayed at the house, answered the door and told officers that Mathis was not home and that she did not know K.G.'s whereabouts. She later admitted that she lied to the officers; in fact, Mathis, K.G., and two other young males were present in the house. Later that night, Mathis took K.G. to his grandmother's house. On March 3, 2013, K.G. disclosed Mathis's alleged sexual abuse to officers.

The officers obtained several warrants to search Mathis's residence. On March 8, 2013, they executed the warrants and found a loaded rifle and ammunition. The officers also found a cell phone with nearly 6,000 text messages on it. Many of the messages were between Mathis and young males whom he had met on Meetme.com, the same social networking site through which K.G. had met Mathis. Several of the text messages were sexually explicit. These text messages showed that Mathis had traveled far to bring some of the young males whom he met on Meetme.com back to his residence. Additionally, a memory card was recovered during the search, which contained a picture of a nude underage male. Investigators also questioned Mathis's girlfriend. She admitted that she lied to officers on their February 25th visit. Mathis's girlfriend also stated that she believed that Mathis was having sexual intercourse with the boys whom he routinely brought to his house. One of the other victims, an 18-year-old male, told the officers that Mathis asked him

about masturbation, asked him about the size of his genitals, and made several sexually explicit comments.

Police arrested Mathis on March 8, 2013, at his place of employment. While in custody, Mathis admitted that he owned the rifle and ammunition. Mathis also freely admitted that the officers might find child pornography on his computer and that he had visited websites to view and visit with young-looking homosexual males.

Mathis was indicted for one count of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(l), to which he pleaded guilty on January 21, 2014, in accordance with a plea agreement.

At Mathis's sentencing hearing, the court first considered whether the ACCA (18 U.S.C. § 924(e)) applied to Mathis. If Mathis possessed three prior convictions for "violent felonies," the ACCA would impose a 15-year mandatory minimum sentence. *Id.* After extensive oral argument and consideration of the Supreme Court's and this court's precedent, the district court ultimately found that Mathis's five burglary convictions in Iowa were violent felonies and justified sentencing under the ACCA. The court found that the Iowa burglary statutes in question, Iowa Code §§ 713.1 and 713.5, were divisible under *Descamps v. United States*, 133 S. Ct. 2276 (2013). Under *Descamps*, the court believed it could use the modified categorical approach to determine the particular elements of the specific burglary provision under which Mathis was convicted. Additionally, the court found that the burglaries were violent felonies under the ACCA's residual clause because they were substantially similar to generic burglary and posed the same risk of harm to others. Finally, the court found Mathis's prior conviction in Iowa for

interference with official acts inflicting serious injury was also a violent felony for ACCA purposes. As a result of the ACCA enhancement, Mathis was sentenced to the mandatory minimum of 180 months' imprisonment with five years of supervised release.

As part of the supervised release, the court imposed special release conditions routinely applied to sex offenders. The court heard testimony from two law enforcement officers that detailed Mathis's interest in young males. In addition to the information pertaining to the instant offense, the officers also disclosed a similar investigation in 1990. Then, two missing young boys, after their recovery, told police that they had been staying in Mathis's trailer. Considering this testimony, even though Mathis had never been convicted of a sex crime, the court found that the conditions of supervised release were appropriate to protect the public from Mathis.

II. *Discussion*

Mathis argues on appeal that his prior convictions for second-degree burglary are not violent felonies under the ACCA. He also challenges the imposition of sex-offender-related special conditions of supervised release.

A. *Application of the ACCA*

Mathis first argues that the district court erred by finding that the Iowa burglary statute was divisible and by applying the modified categorical approach to determine the nature of his convictions. This error, Mathis argues, led the district court to erroneously

conclude that his five previous burglary convictions were violent felonies for ACCA purposes.[2]

We review de novo whether a prior state-court conviction constitutes a violent felony for ACCA purposes. *United States v. Pate*, 754 F.3d 550, 553-54 (8th Cir. 2014) (citation omitted). The ACCA enhances the sentences of those defendants found guilty of being a felon in possession of a firearm that have three previous convictions for "violent felon[ies]." 18 U.S.C. § 924(e)(1). As defined by the statute, a violent felony is one that "(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or (ii) is *burglary*, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another." *Id.* § 924(e)(2)(B) (emphasis added). Accordingly, Mathis contends that none of his convictions for burglary in Iowa qualify as a "burglary" as contemplated in the ACCA.

In the typical case, we use the "categorical approach" to determine whether prior convictions amount to violent felonies. *See Descamps*, 133 S. Ct. at 2283. This approach requires courts to "look only to the fact of conviction and the statutory definition of the prior offense." *Taylor v. United States*, 495 U.S. 575, 602 (1990) (footnote omitted). Thus, in cases where prior

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[2] Mathis does not appeal the district court's finding that his previous Iowa conviction for interference with official acts inflicting serious injury constitutes one of the three predicate violent felonies required to apply the ACCA. Consequently, we consider this issue abandoned on appeal and will not disturb this finding. *See United States v. Batts*, 758 F.3d 915, 916 n.2 (8th Cir. 2014) (an argument raised before the district court but not raised on appeal is considered abandoned).

convictions are for one of the named offenses in § 924(e)(2)(B)(ii), we look only at the elements of the offense as defined by the state statute to discern whether the nature of the state crime fits within the generic definition of the crime considered by the federal statute. For burglary, the Court has defined the generic crime as "having the basic elements of unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime." *Id.* at 599. Therefore, if the state statute is "narrower than the generic view," a conviction under such statute would qualify as a violent felony for ACCA purposes "because the conviction necessarily implies that the defendant has been found guilty of all the elements of generic burglary." *Id.*

There are a "narrow range of cases," however, in which state statutes present the necessary elements for conviction in the alternative. *See Descamps*, 133 S. Ct. at 2283-84. These alternatives, as presented in the statute, lay out one set of elements that would fit within the generic crime and another set of elements that would not. *See id.*, 133 S. Ct. at 2283-84; *see also United States v. Howard*, 742 F.3d 1334, 1343 (11th Cir. 2014). These divisible statutes can thus be divided into alternative elements, which may in some cases constitute violent felonies, but other times may not. When approaching divisible statutes, courts are allowed to go one step further than the categorical approach to apply the "modified categorical approach." *Descamps*, 133 S. Ct. at 2283-84. This tool allows courts to examine certain documents (such as charging papers and jury instructions) to determine under which set of alternative elements the defendant was convicted. *Id.* at 2284-86. Courts can then use their findings to properly determine whether prior convictions are violent felonies. *Id.* at 2284.

In *Descamps*, the Court attempted to clarify divisibility, but as Justice Kennedy observed, this "dichotomy between divisible and indivisible state criminal statutes is not all that clear." *Id.* at 2293 (Kennedy, J., concurring). Applying *Taylor*, the Court proposed a hypothetical state burglary statute that otherwise conformed with generic burglary, but also swept more broadly by criminalizing the "'entry of an automobile as well as a building.'" *Id.* at 2284 (quoting *Taylor*, 495 U.S. at 602). The statute in *Taylor* was a divisible statute because it presented an alternative set of elements, one of which conformed with generic burglary—entry into a building—and one of which did not—entry into an automobile. When dealing with a divisible statute, courts can then use the modified categorical approach to glean from certain approved documents of which set of elements the defendant was prosecuted and found guilty.

The Court's hypothetical became reality in *Shepard v. United States*, 544 U.S. 13 (2005). *Shepard* dealt with the divisibility of a Massachusetts burglary statute that criminalized "entries into 'boats and cars' as well as buildings." *Descamps*, 133 S. Ct. at 2284 (citing *Shepard*, 544 U.S. at 17); *see also* Mass. Gen. Laws ch. 266, §§ 16, 18 (2000). "No one could know, just from looking at the statute, which version of the offense [the defendant] was convicted of" in his guilty plea. *Descamps*, 133 S. Ct. at 2284. Thus, the Court used the modified categorical approach. In doing so, the Court delineated the scope of the modified categorical approach: "It was not to determine 'what the defendant and state judge must have understood as the factual basis of the prior plea,' but only to assess whether the plea was to the version of the crime in the Massachusetts statute (burglary of a building) corresponding to the generic offense." *Id.* (quoting *Shepard*, 544 U.S. at 25).

Our court has also encountered state burglary statutes like the hypothetical in *Taylor* and the convicting statute in *Shepard*. In *United States v. Bell*, we used the modified categorical approach to determine which set of alternative elements the defendant was convicted for in his prior conviction under the Missouri second-degree burglary statute. 445 F.3d 1086, 1090-91 (8th Cir. 2006). Under the Missouri statute, "a person commits second-degree burglary when he 'knowingly enters unlawfully or knowingly remains unlawfully in a building or inhabitable structure for the purpose of committing a crime therein.'" *Id.* at 1090 (quoting Mo. Rev. Stat. § 569.170). The term "inhabitable structure" was elsewhere defined in the statute to "include ships, airplanes, and vehicles." *Id.* (citing Mo. Rev. Stat. § 569.010(2)). Recognizing that this statute was precisely the kind that the Court considered in its hypothetical in *Taylor*, we relied upon portions of the defendant's presentence investigation report that were deemed admitted. *Id.* The report recorded that the defendant's prior conviction under the Missouri statute was for burgling a building. *Id.* Thus, we concluded that the defendant's "prior commercial burglary conviction was ... a generic burglary under *Taylor* and therefore a crime of violence."[3] *Id.* at 1091. We see nothing

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[3] *Bell*'s decision was in the context of determining whether the defendant's prior second-degree burglary conviction was a "crime of violence" under U.S.S.G. § 2K2.1(a)(4)(A). The Guidelines make clear that the term "crime of violence" as used in § 2K2.1(a)(4)(A) "has the meaning given that term in §4B1.2(a)." *Id.* § 2K2.1 cmt. 1. Further, we have long held that the terms "'violent felony' and 'crime of violence' are virtually interchangeable in definition and interpretation." *United States v. Eason*, 643 F.3d 622, 624 n.2 (8th Cir. 2011) (citing *United States v. Williams*, 537 F.3d 969, 971 (8th Cir. 2008)). Thus, cases that analyze the term "crime of violence" in applying enhancements under §§ 2K2.1

from subsequent Supreme Court opinions that overturn our application of the modified categorical approach in *Bell*.

Shepard and *Bell* control the instant appeal. Mathis was previously convicted five times in Iowa for second-degree burglary in violation of Iowa Code §§ 713.3 and 713.5.[4] In Iowa, burglary is defined as follows:

> Any person, having the intent to commit a felony, assault or theft therein, who, having no right, license or privilege to do so, enters an *occupied structure*, such occupied structure not being open to the public, or who remains therein after it is closed to the public or after the person's right, license or privilege to be there has expired, or any person having such intent who breaks an occupied structure, commits burglary.

Iowa Code § 713.1 (1989) (emphasis added). Second-degree burglary is a burglary "in or upon an *occupied structure*" in which no persons are present, the burglar "has possession of an explosive or incendiary device or material" or other dangerous weapon, "or a bodily inju-

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and 4B1.1 of the Guidelines can be used to inform analysis of the term "violent felony" in ACCA cases, and vice versa. Consequently, *Bell*'s "crime of violence" determination is relevant to the current "violent felony" discussion.

[4] Mathis's first conviction was in 1980 for second-degree burglary, in violation of Iowa Code § 713.3; the other four convictions came in 1991, when the second-degree burglary statute was found in § 713.5. Both parties acknowledge the burglary statute was amended in 1984; for simplicity, the parties have agreed to argue on the language as contained in the 1989 version of the statute, under which Mathis was convicted for the second through fifth burglaries.

ry results to any person." *Id.* § 713.5(1)(a) (emphasis added). Second-degree burglary can also be committed if a person is present when the burglary happens but the burglar does not have possession of any of the aforementioned items and there is no bodily injury to any person. *Id.* § 713.5(1)(b).[5]

Thus, a conviction of burglary, at first glance, seems to fit within generic burglary of "unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime." *Taylor*, 495 U.S. at 599. The Iowa statute, however, sweeps more broadly than generic burglary because the term "occupied structure" is defined elsewhere in the statute as:

> [A]ny building, structure, appurtenances to buildings and structures, land, water or air vehicle, or similar place adapted for overnight accommodation of persons, or occupied by persons for the purpose of carrying on business or other activity therein, or for the storage or safekeeping of anything of value. Such a struc-

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[5] Iowa's statutes provide multiple means of committing second-degree burglary, including (1) perpetrating the burglary when someone is present in the place being burgled, (2) perpetrating the burglary when possessing certain items, or (3) if a bodily injury to any person occurs during the commission of the burglary. These alternative elements, however, are irrelevant to divisibility because these alternatives have no bearing on the statute's conformity to the generic burglary definition. "General divisibility ... is not enough; a statute is divisible for purposes of applying the modified categorical approach only if at least one of the categories into which the statute may be divided constitutes, *by its elements*, a crime of violence." *United States v. Cabrera-Umanzor*, 728 F.3d 347, 352 (4th Cir. 2013).

> ture is an "occupied structure" whether or not a person is actually present.

Iowa Code § 702.12. Consequently, it is impossible to know from looking at the convicting statute which set of alternative elements Mathis was convicted of: a set of elements that conforms with generic burglary—entry into a "building" or "structure"—or a set of elements that does not—entry into "land, water or air vehicle." The statute exhibits the exact type of divisibility contemplated in *Taylor* and later solved in *Shepard* and *Bell*. As in the latter mentioned cases, the modified categorical approach is the proper tool to determine whether Mathis's prior convictions are "violent felonies."

Mathis argues against this conclusion by asserting that the convicting statute and definition of "occupied structure" do not present alternative elements, but instead simply present different types of occupied structures that can be burgled. Therefore, "[t]he jurors need not all agree on whether" he burgled a building, a boat, or a car, "because the actual statute requires the jury to find only" that he burgled an occupied structure. *Descamps*, 133 S. Ct. at 2290. This argument amounts to the means/elements distinction that was explicitly rejected in *Descamps*. *Descamps* held that the Court's decisions in *Taylor*, *Shepard*, and *Johnson* "rested on the explicit premise that the laws 'contain[ed] statutory phrases that cover several different ... crimes,' not several different methods of committing one offense." *Id.* at 2285 n.2 (alterations in original) (quoting *Johnson*, 559 U.S. at 144). The Court then instructed that

> [w]hatever a statute lists (*whether elements or means*), the documents we approved in *Taylor* and *Shepard* ... would reflect the crime's ele-

> ments. ... When a state law is drafted in the alternative, the court merely resorts to the approved documents and compares the elements revealed there to those of the generic offense.

Id. (emphasis added). The Court's instruction clarifies the distinction between elements and means in analyzing potentially divisible statutes.[6] In the present case, the term "occupied structure" reflects various places for unlawful entry that the statute criminalizes by providing a disjunctive list of buildings that can be burgled under the statute.[7] Whether these amount to al-

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[6] We recognize the elements/means distinction is a matter that splits our sister circuits. *Compare United States v. Royal*, 731 F.3d 333 (4th Cir. 2013)("Rather than alternative *elements*, then, 'offensive physical contact' and 'physical harm' are merely alternative *means* of satisfying a single element of the Maryland offense."), *and Howard*, 742 F.3d at 1348-49 (finding that a disjunctive "or" statement that listed alternative places that could be burgled were "illustrative examples" and not "alternative elements"), *and Rendon v. Holder*, 764 F.3d 1077, 1086 (9th Cir. 2014) ("To be clear, it is black-letter law that a statute is divisible only if it contains multiple alternative elements, as opposed to multiple alternative means. Thus, when a court encounters a statute that is written in the disjunctive (that is, with an 'or'), that fact alone cannot end the divisibility inquiry." (citation omitted)), *with United States v. Prater*, 766 F.3d 501, 510 (6th Cir. 2014) (finding a New York statute divisible when it listed several alternative places that could be burgled in a disjunctive "or" statement).

[7] We also acknowledge another split in our sister circuits that is relevant for this appeal: whether a court can consider a statute or subsection, outside of the convicting statute, that defines a term in the convicting statute. *Compare United States v. Hockenberry*, 730 F.3d 645, 669 (6th Cir. 2014) (consulting a different statute that defined the term "occupied structure" to determine the divisibility of a Pennsylvania burglary statute), *and United States v. Herrera-Alvarez*, 753 F.3d 132, 139-40 (5th Cir. 2014) (consulting a different statute that defined the term "dangerous weapon" to determine the divisibility of a Louisiana battery statute), *and United States*

ternative elements or merely alternative means to fulfilling an element, the statute is divisible, and we must apply the modified categorical approach.

Upon examining the charging documents that correspond with Mathis's burglary convictions, Mathis was charged with and convicted of entering garages in relation to two of his burglary convictions. Because a garage is clearly a "building," we find that Mathis was convicted under the element of the Iowa burglary statute that conforms with generic burglary. When combining these two convictions with Mathis's conviction for interference with official acts inflicting serious injury, *see supra* n.2, we hold that Mathis has the requisite predicate "violent felonies" to be categorized as an armed career criminal under the ACCA.

B. *Sex-Offender-Related Special Conditions of Supervised Release*

Mathis next argues that the district court abused its discretion by imposing special conditions reserved

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v. Trent, 767 F.3d 1046, 1056 (10th Cir. 2014) (consulting other statutes cross-referenced in a conspiracy statute to determine divisibility), *cert. denied*, No. 14-7762, 2015 WL 732162 (U.S. Feb. 23, 2015), *with United States v. Simmons*, —F.3d—, 2015 WL 1499310, at *4-5 (9th Cir. April 3, 2015) (declining to consult a separate statute that defined the term "custody" in a Hawaii escape statute).

Our case law allows such cross-referencing to definitions of defined terms outside the convicting statute. *See, e.g., United States v. Martinez*, 756 F.3d 1092, 1095-96 (8th Cir. 2014) (finding that Ariz. Rev. Stat. § 13-3102(A) was divisible because of "the fourteen subsections of Ariz. Rev. Stat. § 13-3102(A) *and the numerous disjunctive definitions of the relevant terms* defined in Ariz. Rev. Stat. § 13-3101(A)." (emphasis added)); *Bell*, 445 F.3d at 1090 (consulting a separate section of the convicting statute for the definition of the term "inhabitable structure" in a divisibility determination).

for sex offenders because the conditions result in a greater deprivation of liberty than is reasonably necessary to fulfill the goals outlined in 18 U.S.C. § 3553(a).

"[T]his court reviews the terms and conditions of supervised release for abuse of discretion ...." *United States v. Schaefer*, 675 F.3d 1122, 1125 (8th Cir. 2012) (citation omitted). Generally, "[a] district court has broad discretion to impose special conditions of supervised release, so long as each condition complies with the requirements set forth in 18 U.S.C. § 3583(d)." *United States v. Morais*, 670 F.3d 889, 895 (8th Cir. 2012) (quotation and citation omitted). Such requirements mandate that special conditions are "reasonably related to the factors set forth in" § 3553(a), and that the conditions "involve[] no greater deprivation of liberty than is reasonably necessary for the purposes set forth in" the same section. 18 U.S.C. 3583(d)(l)-(2).

We have previously upheld special conditions of supervised release applied to sex offenders even when the underlying conviction was not for a sex offense. *See United States v. Kelly*, 625 F.3d 516, 519 (8th Cir. 2010) (upholding sex-offender-related special conditions of supervised release for conviction of being a felon in possession of a firearm); *United States v. Smart*, 472 F.3d 556, 559 (8th Cir. 2006) (same). Both *Kelly* and *Smart*, however, involved defendants that had previously been convicted of sex crimes. The question is, then, if Mathis's previous conduct justifies the imposition of the special conditions.

The district court heard extensive testimony from two law enforcement officers concerning allegations of sexual abuse made by K.G.—which happened contemporaneously with the charged offense—and allegations of sexual abuse made by two male children in 1990. In

addition, the presentence investigation report (PSR) detailed instances where Mathis was found to have violated his parole for previous offenses on two different occasions regarding inappropriate behavior with young males. First, Mathis was arrested for conducting lascivious acts with a child in 1986; several individuals alleged Mathis exhibited inappropriate behavior towards their young male children in connection with this arrest. Second, Mathis's parole was revoked in 1989 when allegations surfaced that he performed fellatio on an 11-year-old boy. Mathis did not contest these portions of the PSR, allowing the district court to "accept [the] undisputed portion[s] ... as a finding of fact." *United States v. Lee*, 570 F.3d 979, 982 (8th Cir. 2009) (quotation and citation omitted). Further, sentencing courts are allowed to make "findings ... based on any information other than materially false information." *Schaefer*, 675 F.3d at 1124.

Based on the wealth of evidence presented of Mathis's improper acts toward young males, we find no abuse of discretion in the district court's finding that sex-offender-related special conditions were appropriate to deter Mathis, to protect the public from Mathis, and to provide Mathis with correctional treatment. *See* 18 U.S.C. § 3553(a)(2)(B)-(D).

III. *Conclusion*

For the reasons stated, we affirm Mathis's sentence under the ACCA and the district court's imposition of sex-offender-related special conditions of supervised release.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 14-2396

UNITED STATES OF AMERICA,

Appellee,

v.

RICHARD MATHIS,

Appellant.

Appeal from United States District Court
for the Southern District of Iowa—Davenport
(3:13-cr-00033-JAJ-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Judge Kelly did not participate in the consideration or decision of this matter.

June 23, 2015

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

Criminal No. 3:13-cr-33

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD MATHIS,

Defendant.

June 3, 2014

TRANSCRIPT OF PROCEEDINGS

* * *

[2] THE COURT: Please be seated. The record can reflect that we are here in the matter of United States of America versus Richard Mathis, it is Criminal Case 3:13-cr-33. He is before the Court for sentencing. He pled guilty on January 21st to Count 1 of the June 18, 2013, Indictment. Mr. Mathis is present, he is represented by Terry McAtee. The government is represented by John Keller.

In preparation for sentencing I have reviewed the Presentence Report in its entirety. I have also reviewed Sentencing Memoranda filed by both the government and the defendant.

There are two primary disputes before the Court today, whether he qualifies as an armed career criminal and the terms and conditions of supervised release.

* * *

THE COURT: I would hear your argument on the armed [3] career criminal.

MR. KELLER: Your Honor, the government does have some evidence to produce on—or to present on the conditions of supervised release.

THE COURT: We will do that after the armed career criminal argument.

MR. KELLER: Understood, Your Honor. As the Court is aware, the Armed Career Criminal Act provides for 15-year mandatory minimum penalty if the defendant who is convicted of being a felon in possession of a firearm, the offense to which Mr. Mathis has pled here, if that defendant has three or more prior convictions for offenses that are classified as violent felonies.

Here Mr. Mathis has four prior convictions for second degree burglary under Iowa law and he has a fifth conviction under an assault statute, an aggravated assault statute involving resisting a peace officer and inflicting serious bodily injury.

The Sentencing Memoranda I think identified the issue accurately. The issue is—well, it is a two-step analysis, but first are the burglary statutes that are at issue here divisible and the two versions of the burglary statutes that applied to Mr. Mathis when he was convicted are essentially the same, the first one included an additional category of areas that could be burglarized other than just occupied structures; [4] but the—that's the earlier statute and it sets out occupied structure or another area in the alternative. That's the classic example under Descamps of a divisible statute so then the Court would resort to the modified categor-

ical approach to see if the Court can determine under which alternative the defendant was convicted.

The court documents are clear, in each instance Mr. Mathis was convicted of burglary of either a garage or residence or a machine shed or a storage shed. There's no conviction on which the government is relying was Mr. Mathis convicted of burglarizing an automobile or a boat or something that wouldn't count.

The defense I believe would agree with me to this point, and then the defense argument is because occupied structure is defined separately in the Iowa Criminal Code, it is not—the burglary statute doesn't read it shall be unlawful for someone to enter a building, a boat, an automobile, or, you know, another structure, the statute refers specifically to occupied structure and then occupied structure is defined elsewhere in the statute or elsewhere in the Code.

The definition of occupied structure is any building, structure, appurtenance to buildings and structures, land, water, or air vehicle, or similar place adapted for overnight accommodation of persons or occupied by persons for the purpose of carrying on business or other activity therein or for the [5] storage or safekeeping of anything of value. That again is a list of different categories of places that would—that are occupied structures for the purposes of the statute, that is a list that is set out in the alternative, again that's a classic example of a divisible statute.

The defense points to this Howard case from the Eleventh Circuit in which the Court there said a statute that lists a non-exhaustive list of ways in which a statute could be violated is not the same thing as a statute that sets out a specific alternative element and to the extent that Howard is decided correctly, the

Court in Howard based its decision on the fact that the statutory definition at issue there gave a non-exhaustive, a non-all-inclusive list of things that would count for burglary in that case and so the Court said because it is a non-exhaustive list, it is not a set of discrete alternatives because you can have things that aren't even listed in the statute that would still count as occupied structures in that case.

Here that is not the definition. The definition isn't a list of examples, the definition is an occupied structure is any building, structure, et cetera, et cetera, and it sets out the exact alternatives separated by the word "or" which is exactly what the Supreme Court gave as an example in Descamps of a divisible statute.

The only distinction between this statute and the [6] statute given as an example in Descamps is that this statute refers first to occupied structure and then occupied structure is defined separately in the Code. If you took the definition of occupied structure and substituted that for the words occupied structure in the Iowa burglary statute, you would have the identical situation that the Court discussed in Descamps and that is a distinction without a difference and so it is the government's position that all of the secondary burglary offenses count.

Now, if the Court were to agree with the defense's position and take the position that these statutes are not divisible and so that they are categorically overbroad, then the Court would still have to proceed to the "otherwise clause" of the violent felony definition and determine whether the second degree burglary convictions fall within the "otherwise clause", otherwise presents a serious risk of injury, and the Eighth Circuit has already addressed this issue and held that, you

know, even if a burglary of a commercial building doesn't fall within the generic categorical definition of Taylor or a burglary of some other type of building that is not a residence, even if that doesn't fall under the generic definition of burglary, it still falls within the "otherwise clause" because you're presenting the same risk of harm, you are presenting the same risk of a violent confrontation I think is the exact language when you burglarize a vehicle or a boat or some other [7] building that would fall within the occupied structure definition so on that basis, even if the Court were to find that these offenses are not categorically violent felonies as generic burglaries, the Court should still find that they count under the "otherwise clause" and that was discussed in the Stymiest decision in the Eighth Circuit that we cited in the Sentencing Memorandum.

With regard—so that's the burglaries. The defendant does argue that because Mr. Mathis was sentenced for all the burglaries on the—well, for four of the five burglaries on the same day in '91 I believe it was, that those should not count as separate violations, but that only matters in the context of the Guidelines in calculating criminal history points. It doesn't matter under the violent felony analysis for armed career criminal. The offenses were committed on different days and the court document shows they were committed on different days, they were different victims, that doesn't—that doesn't disqualify any of the predicate offenses.

With regard to the interference with official acts offense, the provision under which Mr. Mathis was convicted, 719.1(2), he was convicted under the last sentence of that statute which reads, "If a person violates this subsection and uses or attempts to use a dangerous weapon or inflict serious injury to another, the person commits a class C felony," and the interference with

official acts statute, the statute reads, "A [8] person under the custody, control, or supervision of the Department of Corrections who knowingly resists, obstructs, or interferes with a correctional officer—and then gives some other examples of people that would qualify under the statute—in the performance of the person's official duties commits a serious misdemeanor."

The defense argues that under Begay this would not fall under the "otherwise clause" because this interference with official acts statute doesn't require purposeful enough conduct or doesn't have a mens rea requirement that requires intentional violent conduct, but the statute requires knowingly resisting, obstructing, or interfering with a correctional officer so that's intentional, knowing conduct, and then the specific provision under which Mr. Mathis was convicted also requires that he either used or attempted to use a dangerous weapon or inflicted serious injury to another and the Eighth Circuit has addressed a similar statute, 719.1(1), and held that the word "inflicts" suggests that force must be used and inflicting injury requires violent force so under Begay it satisfies the test and the statute qualifies under the "otherwise clause" of the violent felony.

The same analysis applies to the subsection that Mr. Mathis was convicted of or was convicted under and so that statute should also qualify as a violent felony, although the Court need not reach that issue necessarily because there are [9] five predicate burglaries that—or four predicate burglaries that could count in this case. That's the argument—that's the government's position with regard to the armed career criminal.

THE COURT: Mr. McAtee?

MR. McATEE: Thank you, Your Honor. Mr. Mathis is not an armed career criminal. The burglary statutes are—the convictions are set forth in Paragraphs 37, 49, 50, 51, and 52. Those convictions are not for violent felonies as that term is defined under 924(e)(2)(B). The Court is aware of the case law. Taylor was the original Supreme Court case which states that Sentencing Courts should generally use the categorical approach and under the categorical approach only the fact of conviction and the statutory definition of the prior offense are relevant.

A generic burglary under the Armed Career Criminal Act as set forth in the Descamps and other prior cases is an unlawful or unprivileged entry into or remaining in a building or structure with the intent to commit a crime.

THE COURT: All of those elements of a generic burglary have always been in the Iowa burglary statute so you say in your brief that because the burglary can be committed by entering, for example, a boat or a car, that it exceeds the bounds of a generic burglary, but I thought that's exactly what makes it a divisible statute and allows the Court to go to the modified categorical approach. That's what I don't understand.

[10] MR. McATEE: What I think is in Descamps, when they started talking in that opinion about divisibility versus indivisibility, and then in Howard is the only circuit case that I found that has addressed burglary statutes after Descamps, and that opinion answers that the government's position basically would amount to any kind of—a statute is nongeneric and like in this case, the government acknowledges it is broader

than the generic definition of burglary, you can go to the modified categorical approach.

THE COURT: No, no, no, Descamps specifically involved a situation where the California burglary statute didn't have that generic element of burglary of an unauthorized presence in the structure, meaning it could be used to punish mere shoplifting in a public place where you were allowed to come. That's why Descamps was indivisible.

Here, I can't find a single part of the generic burglary definition from Taylor that isn't present at least in the alternative in any Iowa burglary statute as it exists and that's the problem I am having with your argument.

MR. McATEE: The burglary statute though in Iowa requires breaking into or remaining in an occupied structure. Occupied structure is defined or the examples given as Mr. Keller points out are broader than that generic. The element though is an occupied structure. The element is not breaking into an automobile, breaking into a home, it is occupied [11] structure.

THE COURT: Structure is what makes it fall within the generic category of burglary.

MR. McATEE: Well, but if you look at the definition of occupied structure, it includes other things beyond what is in the generic definition. The reason why this argument is the stronger argument and why it is indivisible with regard to occupied structure, because that is the element and that is broader, it is not—again, the Iowa burglary statute is did you break into or remain in a burglary—or an occupied structure. Just because there's then illustrative examples given of what may constitute an occupied structure, that is before the

Howard opinion kicks in, that's not the same as alternative elements.

Alternative elements would be if it was under the burglary statute, it's a burglary to break into a car, a burglary to break into a home. It is not to break into an occupied structure and why this I believe is the correct interpretation, Descamps—the opinion goes out of its way to state that the key is the elements of the prior statute that was violated, not the facts of the case, and in looking—the question is in looking at the elements and the fact of conviction, did Mr. Mathis necessarily commit a generic burglary offense, and you can't say that under the Iowa statute. He did not necessarily looking at the elements commit a violent crime [12] and that's what Descamps says and that's where Howard gets that language that just giving examples is not alternative elements and that's why I think that's the appropriate interpretation of Descamps.

Now, I didn't find an Eighth Circuit opinion, I don't think they have ruled on this particular issue, but that is—that Howard opinion comes from Descamps' focus on strictly looking at the elements of the offense and by violating that, do you necessarily commit a violent crime and he didn't because occupied structure includes other things besides what is contained in the generic definition of burglary.

Mr. Keller's argument might have had more weight before Descamps. I don't think it does after Descamps and Howard is certainly in our favor and that is again from my reading of the cases a correct interpretation of Descamps and where Courts will go after that so the Court is not allowed to go to the modified categorical approach and under the categorical approach these are not generic burglaries under the Armed Career Crimi-

nal Act and we have addressed these other arguments, Your Honor.

Even under the modified categorical approach again we're—it is our position that the Court cannot go to that approach. Paragraphs 50 and 52 involve a storage shed and a machine shed, I am not aware of any cases which have held that—and the government doesn't cite any that those are violent [13] crimes.

With regard—

THE COURT: Why should they be treated any different than a garage which there are bunches of cases on?

MR. McATEE: I think what the argument is on the—I am not even sure garage would be still—I realize the current Eighth Circuit precedent is a garage in that Mathijssen case. That's based on prior precedent, but that is not categorically a crime of violence. We have just addressed that. I don't think it is anymore and I don't think the government is arguing a burglary statute is categorically a crime of violence under Iowa law.

But the argument has always been what is the likelihood someone else will be present. That's the old case law and so our argument here is a storage shed, a machine shed is further removed from that possibility. Again, under the current Eighth Circuit case law, under the modified categorical approach, I think that the Eighth Circuit would say a garage would be under Mathijssen. I am just not sure that's still valid precedent. It is the precedent at this point, I am not sure it withstands Descamps and the reasoning in Howard.

The "otherwise clause", we have talked about that. The case—well, the "otherwise clause" in Begay talks

about must be purposeful, violent, and aggressive, must pose a similar degree of risk of physical injury as the example crimes. Again, [14] it is our position that these are not generic burglary crimes so any of this prior case law is not—certainly question whether it is still precedent; but again, it is our position only the categorical approach can be employed here and under that approach these are not generic burglaries, therefore they are not violent crimes under the Armed Career Criminal Act.

We have also addressed the Paragraphs 49, 50, 51, and 52, that they were not committed on occasions different from one another, but the Court is aware of the law on that. These burglaries were all committed in less than a two-month period in Muscatine County back in 1990. They're similar offenses, no intervening arrest, and they were sentenced at the same time.

THE COURT: Intervening arrest, you know that comes from criminal history points. There's nothing in the plain language of the Armed Career Criminal Statute that says anything about that or any case either, right?

MR. McATEE: No, other than on the one case—that's right, it is in the Guidelines; but on the one case cited by the government, that opinion made note of the fact that there was one or two intervening arrests. That's—there's not a case that I found that said no intervening arrests means they were not committed on the occasions different from one another; but no, that is Guideline language. However, the case pointed out by the government does cite that there were one or maybe more intervening arrests.

[15] It is also our position that interference conviction is not a violent crime. The intent Mr. Keller talked

about was related to the interference, knowingly resists, obstructs, or interference with a correctional officer. It is not related to the inflicting serious injury to another. Again, the government points out, and we have also, Malloy requires that it must pose a similar degree of risk of physical injury to the example crimes.

It is our position this interference statute does not and also the intent to inflict injury is not a requirement so for those reasons, and we have also argued that in our brief, that is not a violent crime also so based on this argument, Your Honor, and the Descamps opinion and Howard and the interpretation of Descamps and Taylor and all the other Armed Career Criminal Act cases, it is our position Mr. Mathis is not an armed career criminal. Thank you.

THE COURT: Thank you. I find that he is an armed career criminal. The Iowa burglary statute as it existed on each of the occasions for which he was convicted is divisible as that term is used in Descamps. In each of these—the burglary statute has all of the elements of generic burglary as the Supreme Court decided it in the Taylor situation.

This would be a Descamps situation if, for example, the Iowa burglary statute said that it was illegal to enter real estate and real estate could include a lake, an open field with [16] unapproved structures. Here the statute specifically refers to occupied structure and occupied structure can be a house, a business, and it can also be a boat or a car and that's what makes it divisible and that's what allows the Court to use the modified categorical approach, look at judicially noticeable documents, and determine that in each case Mr. Mathis was charged and convicted with entering an occupied

structure to include the storage shed, machine shed, garage, or whatnot.

The Court would further find that in any event that these convictions qualify as violent felonies under the clause that permits their use where they otherwise involve conduct that presents serious potential risk of physical injury to another. I also find that the conviction at Paragraph 53 qualifies, and the Court relies on the Malloy decision in large part to make that finding.

These offenses were committed on occasions different from one another. There are several of them that have the same arrest date, but the intervening arrest is not a requirement of the plain language of the statute or any case law that is applicable here.

I would hear your evidence with respect to the terms of supervised release.

MR. KELLER: Thank you, Your Honor. I would also, although they were attached to the government's Sentencing Memorandum and are part of the record, I would offer [17] Government's Exhibits 1 through 6 which are the copies of the convictions to make sure the record is complete.

THE COURT: Mr. McAtee?

MR. McATEE: We'd object, Your Honor, on the basis of the objection it is our position that only the categorical approach can be employed here so based on that we'd object.

THE COURT: Objection is overruled. The exhibits attached to the government's brief are received.

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA
V.
Richard Mathis

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 3:13-cr-00033-001
USM Number: 14205-030
Terence L. McAtee
Defendant's Attorney

Date of Original Judgment: 6/3/2014
(Or Date of Last Amended Judgment)

Reason for Amendment:

- ☐ Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
- ☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
- ☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
- ☑ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)
- ☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
- ☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- ☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- ☐ Direct Motion to District Court Pursuant ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)
- ☐ Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

- ☑ pleaded guilty to count(s) One of the indictment filed June 18, 2013
- ☐ pleaded nolo contendere to count(s) which was accepted by the court.
- ☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 922(g)(1), 924(a)(2), 924(e)	Felon in Possession of a Firearm	03/08/2013	One

☐ See additional count(s) on page 2

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

6/3/14
Date of Imposition of Judgment

Signature of Judge

John A. Jarvey, U.S. District Judge
Name of Judge Title of Judge

6/16/14

AO 245C (Rev. 09/11) Amended Judgment in a Criminal Case
v1 Sheet 2 — Imprisonment

DEFENDANT: Richard Mathis
CASE NUMBER: 3:13-cr-00033-001

Judgment Page: 2 of 6

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

180 months on Count One of the Indictment filed June 18, 2013

☑ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends the defendant is incarcerated at FCI Oxford, Wisconsin.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ____ ☐ a.m. ☐ p.m. on ____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before on ____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on ____ to ____

a ____ with a certified copy of this judgment.

____
UNITED STATES MARSHAL

By ____
DEPUTY UNITED STATES MARSHAL

AO 245C (Rev. 09/11) Amended Judgment in a Criminal Case
sl Sheet 3 — Supervised Release

DEFENDANT: Richard Mathis
CASE NUMBER: 3:13-cr-00033-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
Five years on Count One of the Indictment filed June 18, 2013

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*

☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*

☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation office;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcemnt agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall submit to a mental health evaluation. If treatment is recommended, the defendant shall participate in an approved treatment program and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment and/or compliance with a medication regimen. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

The defendant shall participate in a sex offender treatment program, to include psychological testing and a polygraph examination, as directed by the U.S. Probation Officer. The defendant shall also abide by all supplemental conditions of sex offender treatment, to include abstaining from alcohol. Participation may include inpatient/outpatient treatment, if deemed necessary by the treatment provider. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. Sex offender assessments and treatment shall be conducted by therapists and polygraph examiners approved by the U.S. Probation Office, who shall release all reports to the U.S. Probation Office. The results of a polygraph examination will not be used for the purpose of revocation of supervised release. If disclosure is required by mandatory reporting laws, polygraph results will be reported to appropriate treatment personnel, law enforcement, and related agencies with the approval of the Court. If polygraph results reveal possible new criminal behavior, this will be reported to the appropriate law enforcement and related agencies after obtaining approval from the Court.

The defendant shall reside, participate, and follow the rules of the residential reentry program, as directed by the U.S. Probation Officer, for up to 120 days. The residential reentry program is authorized to allow up to six hours of pass time per week for good conduct when the defendant becomes eligible in accordance with the residential reentry program standards.

The defendant shall not have any contact (personal, electronic, mail, or otherwise) with any child under the age of 18, including in employment, without the prior approval of the U.S. Probation Officer. If contact is approved, the defendant must comply with any conditions or limitations on this contact, as set forth by the U.S. Probation Officer. Incidental contact in the course of daily commercial transactions is permissible.

The defendant shall not view or possess any form of pornography or sexually-oriented material, correspond with anyone in the business of providing such material, or enter adult entertainment venues where pornography or erotica are the primary products for purchase or viewing.

The defendant shall not possess or use a computer or any other device with an internal, external, or wireless modem, without the prior approval of the U.S. Probation Officer. If computer use is approved, the defendant shall submit to unannounced examinations of all computer equipment, the installation of monitoring hardware and software, and the possible removal of such equipment for a more thorough inspection. If computer use for employment purposes is approved by the U.S. Probation Officer, the defendant shall permit third party disclosure to any employer or potential employer concerning any computer-related restrictions that are imposed upon the defendant.

The defendant shall submit to a search of his person, residence, adjacent structures, office or vehicle, conducted by a U.S. Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the residence or vehicle may be subject to searches pursuant to this condition. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

DEFENDANT: Richard Mathis
CASE NUMBER: 3:13-cr-00033-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$ 0.00	$ 0.00

☐ The determination of restitution is deferred until _____ An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$0.00	$0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

AO 245C (Rev. 09/11) Amended Judgment in a Criminal Case
v1 Sheet 6 — Schedule of Payments

DEFENDANT: Richard Mathis
CASE NUMBER: 3:13-cr-00033-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than ____ or
☑ in accordance ☐ C, ☐ D, ☐ E, or ☑ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal ____ ____ *(e.g., weekly, monthly, quarterly)* installments of $ ____ over a period of ____ *(e.g., months or years)*, to commence ____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal ____ ____ *(e.g., weekly, monthly, quarterly)* installments of $ ____ over a period of ____ *(e.g., months or years)*, to commence ____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within ____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:

All criminal monetary payments are to be made to the Clerk's Office, U.S. District Court, P.O. Box 9344, Des Moines, IA. 50306-9344.
While on supervised release, you shall cooperate with the Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the Probation Office.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☑ The defendant shall forfeit the defendant's interest in the following property to the United States:

a .22 caliber rifle, Mossberg 142A and 1,024 rounds assorted ammunition, as outlined in the preliminary order of forfeiture issued on January 28, 2014.*

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal,

nless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during iprisonment. All crimnal m onetary penalties, except those payments m ade through the Federal Bureau of Prisons' Inmate Financ ial :sponsibility Program, are made to the clerk of the court.

ıe defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

a .22 caliber rifle, Mossberg 142A and 1,024 rounds assorted ammunition, as outlined in the preliminary order of forfeiture issued on January 28, 2014.*

ıyments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal,) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

Criminal No. 3:13-cr-33

UNITED STATES OF AMERICA,

v.

RICHARD MATHIS,

Defendant.

[stamp omitted]

INDICTMENT
T. 18 U.S.C. § 922(g)(1)
T. 18 U.S.C. § 924(a)(2)
T. 18 U.S.C. § 924(d)
T. 18 U.S.C. § 924(e)
T. 28 U.S.C. § 2461(c)

THE GRAND JURY CHARGES:

COUNT 1

(Felon in Possession of a Firearm)

That on or about March 8, 2013, in the Southern District of Iowa, the defendant, RICHARD MATHIS, having been previously convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess a firearm, that is, a .22 caliber rifle, said firearm possessed in and affecting commerce.

This is a violation of Title 18, United States Code, Sections 922(g)(1), 924(a)(2), and 924(e).

THE GRAND JURY FINDS:

NOTICE OF FORFEITURE

That upon conviction for the offense alleged in Count 1 of this Indictment, the defendant, RICHARD MATHIS, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 924(d), and Title 28, United States Code, Section 2461(c), all firearms, magazines, and ammunition involved in the commission of said offense, including, but not limited to, the firearm identified in Count 1 of this Indictment.

A TRUE BILL.

/s/
FOREPERSON

Nicholas A. Klinefeldt
United States Attorney

By: /s/
John D. Keller
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

Case No. 3:13-cr-33

UNITED STATES OF AMERICA,

v.

RICHARD MATHIS,

Defendant.

PLEA AGREEMENT

The United States of America (also referred to as "the Government") and RICHARD MATHIS, and Defendant's attorney, enter into this Plea Agreement.

A. CHARGES

1. Subject Offense. Defendant will plead guilty to Count 1 of the Indictment, that is, Felon in Possession of a Firearm, in violation of Title 18, United States Code, Sections 922(g), 924(a)(2), and 924(e). Defendant also agrees to forfeiture of the .22 caliber firearm and any ammunition as provided for in the Indictment.

2. No Charges to be Dismissed. There are no charges to be dismissed.

3. No Further Prosecution. The Government agrees that Defendant will not be charged in the Southern District of Iowa with any other federal criminal offense arising from or directly relating to this investigation. This paragraph and this Plea Agreement do not apply to (1) any criminal act occurring after the

date of this agreement, (2) any crime of violence as defined in 18 U.S.C. § 3156(a)(4) other than any felony under chapter 109A, 110, or 117 of the United States Code arising from this investigation, or (3) any criminal offense which Defendant did not fully disclose to law enforcement during Defendant's interviews pursuant to any proffer or other agreements with the United States.

B. MAXIMUM PENALTIES

4. Maximum and Mandatory Minimum Punishment. Defendant understands that the crime to which Defendant is pleading guilty carries a maximum sentence of up to 10 years in prison; a maximum fine of $250,000; and a maximum term of supervised release of 3 years. A mandatory special assessment of $100 per count also must be imposed by the sentencing court. Defendant understands that if the court determines at sentencing that he has three or more prior convictions for a serious drug offense or violent felony as defined in 18 U.S.C. § 924(e)(2), Defendant would be subject to a mandatory minimum term of imprisonment of 15 years up to a maximum term of imprisonment of life, a maximum fine of $250,000, and a maximum term of supervised release of 5 years. The mandatory special assessment of $100 would still be imposed. Defendant understands that the Court may not impose a sentence less than the mandatory minimum sentence unless the Government files a motion for substantial assistance under 18 U.S.C. § 3553(e) or unless the Court finds that Defendant qualifies for safety valve under 18 U.S.C. § 3553(f). No one has promised Defendant that Defendant will be eligible for a sentence of less than the mandatory minimum.

5. Supervised Release—Explained. Defendant understands that, during any period of supervised release or probation, Defendant will be under supervision and will be required to comply with certain conditions. If Defendant were to violate a condition of supervised release, Defendant could be sentenced up to 2 years in prison, without any credit for time previously served if the enllanced penalty provisions of 18 U.S.C. § 924(e)(2) do not apply and up to 5 years in prison, without any credit for time previously served if the enhanced penalty provisions of 18 U.S.C. § 924(e)(2) do apply.

6. Detention. Defendant agrees that Defendant will remain in custody following the completion of the entry of Defendant's guilty plea to await the imposition of sentence.

7. Stipulation to Prior Convictions. Defendant waives any required notice under 18 U.S.C. § 924(e) and stipulates to the following, non-exhaustive, list of prior felony convictions for purposes of determining whether he is subject to the enhanced penalty provisions of the Armed Career Criminal Act:

> That on or about March 6, 1981, Defendant was convicted of burglary 2nd degree for a burglary committed on or about November 26, 1980, in violation of Iowa Code, Sections 713.1 and 713.3, in the Iowa District Court in and for Muscatine County (Cr. No. 1083A-1280), a felony offense;
>
> That on or about May 12, 1986, Defendant was convicted of escape from custody in violation of Iowa Code Section 719.4(1), in the Iowa District Court in and for Muscatine County (Cr. No. 1663-486), a felony offense;

That on or about May 24, 1991, Defendant was convicted of burglary 2nd degree for a burglary committed on or about June 9, 1990, in violation of Iowa Code, Section 713.5, in the Iowa District Court in and for Muscatine County (Cr. No. 2174-191), a felony offense;

That on or about May 24, 1991, Defendant was convicted of burglary 2nd degree for a burglary committed on or about July 9, 1990, in violation of Iowa Code, Section 713.5, in the Iowa District Court in and for Muscatine County (Cr. No. 2179-291), a felony offense;

That on or about May 24, 1991, Defendant was convicted of burglary 2nd degree for a burglary committed on or about August 2, 1990, in violation of Iowa Code, Section 713.5, in the Iowa District Court in and for Muscatine County (Cr. No. 2181-291), a felony offense;

That on or about May 24, 1991, Defendant was convicted of burglary 2nd degree for a burglary committed on or about June 17, 1991, in violation of Iowa Code, Section 713.5, in the Iowa District Court in and for Muscatine County (Cr. No. 2178-291), a felony offense;

That on or about September 30, 1994, Defendant was convicted of interference with official acts—inflicting serious injury, in violation of Iowa Code, Section 719.1(2), in the Iowa District Court in and for Jones County (Cr. No. 660-1193), a felony offense.

C. NATURE OF THE OFFENSE—FACTUAL BASIS

8. Elements Understood. Defendant understands that to prove the offense alleged under Count 1 (Felon in Possession of a Firearm), the Government would be required to prove beyond a reasonable doubt the following elements:

(1) Defendant had been convicted of a crime punishable by imprisonment for a term exceeding one year;

(2) Defendant thereafter knowingly possessed a firearm; and

(3) The firearm was transported across a state line some time during or before Defendant's possession of it.

9. Elements Admitted. As a factual basis for this plea of guilty, Defendant admits the following:

(1) On March 8, 2013, law enforcement recovered a .22 caliber Mossberg rifle during the execution of a search warrant at Mathis's residence.

(2) On the same date Mathis was arrested at his place of employment and admitted to knowingly possessing the firearm recovered from his residence.

(3) Prior to March 8, 2013, Mathis had been convicted of multiple felony offenses, each punishable by imprisonment for a term exceeding one year.

(4) The .22 caliber Mossberg rifle was not manufactured in Iowa; the firearm was

transported across a state line some time before Mathis's possession of it.

10. Truthfulness of Factual Basis. Defendant acknowledges that the above statements are true. Defendant understands that, during the change of plea hearing, the judge and the prosecutor may ask Defendant questions under oath about the offense to which Defendant is pleading guilty, in the presence of Defendant's attorney. Defendant understands that Defendant must answer these questions truthfully, and that Defendant can be prosecuted for perjury if Defendant gives any false answers.

11. Venue. Defendant agrees that venue for this case is proper for the United States District Court for the Southern District of Iowa.

D. SENTENCING

12. Sentencing Guidelines. Defendant understands that Defendant's sentence will be determined by the Court after considering the advisory United States Sentencing Guidelines, together with other factors set forth by law. The Sentencing Guidelines establish a sentencing range based upon factors determined to be present in the case, which include, but are not limited to the following:

(a) the nature of the offenses to which Defendant is pleading guilty;

(b) the number of firearms possessed;

(c) whether the firearm was used in connection with another felony offense;

(d) the nature and extent of Defendant's criminal history (prior convictions);

(e) whether the defendant is an Armed Career Criminal pursuant to 18 U.S.C. § 924(e); and

(f) acceptance or lack of acceptance of responsibility.

Defendant understands that, under some circumstances, the Court may "depart" or "vary" from the Sentencing Guidelines and impose a sentence more severe or less severe than provided by the Guidelines, up to the maximum in the statute of conviction. Defendant has discussed the Sentencing Guidelines with Defendant's attorney.

13. Acceptance of Responsibility. The government agrees to recommend that Defendant receive credit for acceptance of responsibility under USSG § 3E1.1. The government reserves the right to oppose a reduction under § 3E1.1 if after the plea proceeding Defendant obstructs justice, fails to cooperate fully and truthfully with the United States Probation Office, attempts to withdraw Defendant's plea, or otherwise engages in conduct not consistent with acceptance of responsibility. If the base offense level is 16 or above, as determined by the Court, the government agrees that Defendant should receive a 3-level reduction, based on timely notification to the government of Defendant's intent to plead guilty.

14. Presentence Report. Defendant understands that the Court may defer a decision as to whether to accept this Plea Agreement until after a Presentence Report has been prepared by the United States Probation Office, and after Defendant's attorney and the Government have had an opportunity to review and challenge the Presentence Report. The parties are free

to provide all relevant information to the Probation Office for use in preparing a Presentence Report.

15. Evidence at Sentencing. The parties may make whatever comment and evidentiary offer they deem appropriate at the time of sentencing and entry of plea, provided that such offer or comment does not violate any other provision of this Plea Agreement. Nothing in this Plea Agreement restricts the right of Defendant or any victim to make an allocution statement, to the extent permitted under the Federal Rules of Criminal Procedure, nor does this Plea Agreement convey any rights to appear at proceedings or make statements that do not otherwise exist.

16. Sentence to be Decided by Judge—No Promises. This Plea Agreement is entered pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure. The government and the defendant jointly recommend that if the defendant is determined to be an Armed Career Criminal pursuant to 18 U.S.C. § 924(e), that the Court inpose the mandatory minimum fifteen year term of imprisonment. The parties also jointly recommend that if the defendant is not determined to be an Armed Career Criminal pursuant to 18 U.S.C. § 924(e), that the Court impose a sentence of not more than eighty-four months. Defendant understands that the final sentence, including the application of the Sentencing Guidelines and any upward or downward departures, is within the sole discretion of the sentencing judge, and that the sentencing judge is not required to accept any factual or legal stipulations agreed to by the parties. Any estimate of the possible sentence to be imposed, by a defense attorney or the Government, is only a prediction, and not a promise, and is not binding. Therefore, it is uncertain at this time what each Defendant's actual sentence will be.

17. No Right to Withdraw Plea. Defendant understands that Defendant will have no right to withdraw Defendant's plea if the sentence imposed, or the application of the Sentencing Guidelines, is other than what Defendant anticipated, or if the sentencing judge declines to follow the parties' recommendations.

E. FORFEITURE, FINES, COSTS, AND RESTITUTION

18. Forfeiture. Defendant agrees to forfeiture of the property identified in the Indictment, including the .22 caliber Mossberg rifle, and any ammunition seized in connection with the investigation of this offense. Defendant will execute any documents as directed by the Government to complete the forfeiture.

19. Waivers Regarding Forfeiture. Defendant waives all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds. Defendant further agrees that the forfeiture provisions of this Plea Agreement are intended to, and will, survive Defendant notwithstanding the abatement of any underlying criminal conviction after execution of this Plea Agreement. The forfeitability of any particular property pursuant to this agreement shall be determined as if Defendant had survived and that determination shall be binding upon Defendant's heirs, successors and assigns until the agreed forfeiture, including any agreed money judgment amount, is collected in full.

20. Consent to Judgment of Forfeiture. Defendant agrees to waive all interest in asset subject to this Plea Agreement in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. Defendant agrees to consent to the entry of orders of

forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Defendant understands that the forfeiture of assets is part of the sentence that may be imposed in this case.

21. Fines and Costs. Issues relating to fines and/or costs of incarceration are not dealt with in this agreement, and the parties are free to espouse their respective positions at sentencing.

22. Special Assessment. Defendant agrees to pay the mandatory special assessment of $100 ($100 per count) at or before the time of sentencing, as required by 18 U.S.C. § 3013.

23. Restitution. Defendant agrees that the Court should impose an order of restitution for all relevant conduct in an amount to be determined by the Court; that such order of restitution shall be due and payable immediately; and that if Defendant is not able to make full payment immediately, Defendant shall cooperate with the United States Probation Office in establishing an appropriate payment plan, which shall be subject to the approval of the Court, and thereafter in making the required payments. Any such payment plan does not preclude the Government from utilizing any collections procedures pursuant to the Federal Debt Collections Act and including the Treasury offset program.

24. Financial Statement. Defendant agrees to complete truthfully and in full a financial statement provided by the U.S. Attorney's Office, and return the financial statement to the U.S. Attorney's Office within 30 days of the filing of this Plea Agreement.

F. LIMITED SCOPE OF AGREEMENT

25. Limited Scope of Agreement. This Plea Agreement does not limit, in any way, the right or ability of the Government to investigate or prosecute Defendant for crimes occurring outside the scope of this Plea Agreement. Additionally, this Plea Agreement does not preclude the Government from pursuing any civil or administrative matters against Defendant, including, but not limited to, civil tax matters and civil forfeiture which arise from, or are related to, the facts upon which this investigation is based.

26. Agreement Limited to Southern District of Iowa. This Plea Agreement is limited to the United States Attorney's Office for the Southern District of Iowa, and cannot bind any other federal, state or local prosecuting, administrative, or regulatory authorities.

G. WAIVER OF TRIAL, APPEAL AND POST-CONVICTION RIGHTS

27. Trial Rights Explained. Defendant understands that this guilty plea waives the right to:

(a) continue to plead not guilty and require the Government to prove the elements of the crime beyond a reasonable doubt;

(b) a speedy and public trial by jury, which must unanimously find Defendant guilty before there can be a conviction;

(c) the assistance of an attorney at all stages of trial and related proceedings, to be paid at government expense if Defendant cannot afford to hire an attorney;

(d) confront and cross-examine adverse witnesses;

(e) present evidence and to have witnesses testify on behalf of Defendant, including having the court issue subpoenas to compel witnesses to testify on Defendant's behalf;

(f) not testify or have any adverse inferences drawn from the failure to testify (although Defendant also has the right to testify, if Defendant so chooses); and

(g) if Defendant is convicted, the right to appeal, with the assistance of an attorney, to be paid at government expense if Defendant cannot afford to hire an attorney.

28. Waiver of Appeal and Post-Conviction Review. Defendant knowingly and expressly waives any and all rights to appeal Defendant's conviction in this case, including a waiver of all motions, defenses and objections which Defendant could assert to the charge(s) or to the court's entry of judgment against Defendant; except that both Defendant and the United States preserve the right to appeal any sentence imposed by the district court, to the extent that an appeal is authorized by law. Also, Defendant knowingly and expressly waives any and all rights to contest Defendant's conviction in any post-conviction proceedings, including any proceedings under 28 U.S.C. § 2255. These waivers are full and complete, except that they do not extend to the right to appeal or seek post-conviction relief based on grounds of ineffective assistance of counsel or prosecutorial misconduct not known to Defendant, or reasonably knowable, at the time of entering this Plea Agreement.

H. VOLUNTARINESS OF PLEA AND OPPORTUNITY TO CONSULT WITH COUNSEL

29. Voluntariness of Plea. Defendant represents that Defendant's decision to plead guilty is Defendant's own, voluntary decision, and that the following is true:

(a) Defendant has had a full opportunity to discuss all the facts and circumstances of this case with Defendant's attorney, and Defendant has a clear understanding of the charges and the consequences of this plea, including the maximum penalties provided by law.

(b) No one has made any promises or offered any rewards in return for this guilty plea, other than those contained in this written agreement.

(c) No one has threatened Defendant or Defendant's family to induce this guilty plea.

(d) Defendant is pleading guilty because in truth and in fact Defendant is guilty and for no other reason.

30. Consultation with Attorney. Defendant has discussed this case and this plea with Defendant's attorney and states that the following is true:

(a) Defendant states that Defendant is satisfied with the representation provided by Defendant's attorney.

(b) Defendant has no complaint about the time or attention Defendant's attorney has devoted to this case nor the advice the attorney has given.

(c) Although Defendant's attorney has given Defendant advice on this guilty plea, the decision to plead guilty is Defendant's own decision. Defendant's decision to enter this plea was made after full and careful thought, with the advice of Defendant's attorney, and with a full understanding of Defendant's rights, the facts and circumstances of the case, and the consequences of the plea.

I. GENERAL PROVISIONS

31. Entire Agreement. This Plea Agreement, and any attachments, is the entire agreement between the parties. Any modifications to this Plea Agreement must be in writing and signed by all parties.

32. Public Interest. The parties state this Plea Agreement is in the public interest and it takes into account the benefit to the public of a prompt and certain disposition of the case and furnishes adequate protection to the public interest and is in keeping with the gravity of the offense and promotes respect for the law.

33. Execution/Effective Date. This Plea Agreement does not become valid and binding until executed by each of the individuals (or their designated representatives) shown below.

J. SIGNATURES

34. Defendant. I have read all of this Plea Agreement and have discussed it with my attorney. I fully understand the Plea Agreement and accept and agree to it without reservation. I do this voluntarily and of my own free will. No promises have been made to me other than the promises in this Plea Agreement. I have not been threatened in any way to get me to enter into

this Plea Agreement. I am satisfied with the services of my attorney with regard to this Plea Agreement and other matters associated with this case. I am entering into this Plea Agreement and will enter my plea of guilty under this Agreement because I committed the crime to which I am pleading guilty. I know that I may ask my attorney and the judge any questions about this Plea Agreement, and about the rights that I am giving up, before entering into the plea of guilty.

01-21-14	/s/ Richard Mathis
Date	Richard Mathis

35. Defendant's Attorney. I have read this Plea Agreement and have discussed it in its entirety with my client. There is no Plea Agreement other than the agreement set forth in this writing. My client fully understands this Plea Agreement. I am satisfied my client is capable of entering into this Plea Agreement, and does so voluntarily of Defendant's own free will, with full knowledge of Defendant's legal rights, and without any coercion or compulsion. I have had full access to the Government's discovery materials, and I believe there is a factual basis for the plea. I concur with my client entering into this Plea Agreement and in entering a plea of guilty pursuant to the Plea Agreement.

1/21/14	/s/ Terence L. McAtee
Date	TERENCE L. MCATEE Federal Public Defender's Office 101 W. 2nd Street, Suite 401 Davenport, IA 52801-1815 TEL: 563/322-8931 FAX: 563/383-0052 terry_mcatee@fd.org

36. United States. The Government agrees to the terms of this Plea Agreement.

Nicholas A. Klinefeldt
United States Attorney

1/21/14
Date

/s/ John D. Keller
John D. Keller
Assistant U.S. Attorney
U.S. Courthouse
131 East 4th St.
Davenport, Iowa 52801
Telephone: 563-449-5432
Telefax: 563-449-5433
E-mail: john.keller@usdoj.gov

IN THE IOWA DISTRICT COURT FOR MUSCATINE COUNTY

STATE OF IOWA,

Plaintiff,

vs.

RICHARD ALLEN MATHIS and STEVEN MICHAEL McFADON,

Defendants

No. 1083-1280

TRIAL INFORMATION

Comes now Stephen J. Petersen as Prosecuting Attorney, and in the name and by the authority of the State of Iowa accuses

Richard Allen Mathis, 4811 Grandview Avenue, Muscatine, IA; and Steven Michael McFadon, 419 Locust, Muscatine, IA

of the crime of second degree burglary

committed as follows: The said Richard Allen Mathis and Steven Michael McFadon on or about November 26, 1980 in the County of Muscatine and State of Iowa, did unlawfully and willfully These men broke into an occupied structure and a place where something of value is kept, to-wit: the house and garage of Allen Harvey, Route 6, Box 615, Muscatine, IA, with the intent to commit theft therein

in violation of Sections 713.1 and 713.3 of the Iowa Criminal Code.

FILED
1980 DEC 30 PM 3:54
FLORENCE METZLER, CLERK
BY
DISTRICT COURT
MUSCATINE COUNTY, IOWA

A TRUE INFORMATION

Stephen J. Petersen
Prosecuting Attorney

"On the 30 day of December, 1980, I find that the evidence contained in the within Trial Information and minutes of evidence, if unexplained, would _____ warrant a conviction by the trial jury, and being satisfied from the showing made herein that this case should _____ be prosecuted by Trial Information the same is _____ approved.

Defendant is released on:

1. personal recognizance _____
2. appearance bond $_____
   a. unsecured _____
   b. secured _____
3. other _____
4. conditions previously set ___ X

GOVERNMENT EXHIBIT 1

R K

60

IN THE IOWA DISTRICT COURT FOR MUSCATINE COUNTY

* * * * * * * * * * * * * * *

STATE OF IOWA,	)	
	)	
Plaintiff,	)	No. 1083A-1280
	)	
vs.	)	ORDER
	)	RE SENTENCE
RICHARD ALLEN MATHIS,	)	
	)	
Defendant.	)	

* * * * * * * * * * * * * * *

FILED
2013 MAR -8 PM 3:03
BY FLORENCE KETZLER, CLERK
MUSCATINE DISTRICT COURT
MUSCATINE COUNTY, IOWA

State of Iowa appears by S. J. Petersen County Attorney, and the defendant appears in person with his attorney, Jose Olvera. The Court having seen a copy of the presentence investigation states that he cannot go along with the plea agreement, and gives the defendant an opportunity to withdraw his plea of guilty to the charge of Burglary in the 2nd degree. Defendant declines to withdraw his plea of guilty, and the Court enters judgment accordingly Counsel state that they know of no reason why sentence should not be imposed at this time.

IT IS, THEREFORE, ORDERED:

That pursuant to defendant's plea of guilty to the charge of Burglary in the 2nd degree, contrary to Sections 713.1 and 713.3 of the 1979 Code of Iowa, and as provided by Section 902.3 and 902.9 of said Code, it is the judgment and sentence of the court that the defendant be, and he is hereby committed to the custody of Director, Division of Adult Corrections for a period of not to exceed ten (10) years and pay the costs of this action. He will receive credit on said sentence for any time spent in the Muscatine County Jail in connection with this case. The Mens Reformatory at Anamosa, Iowa, is designated as the reception center to which the defendant is to be delivered by the sheriff.

IN THE IOWA DISTRICT COURT FOR MUSCATINE COUNTY

STATE OF IOWA,	:	
	:	CRIMINAL NO. 2174-191
Plaintiff,	:	
	:	
vs.	:	TRIAL INFORMATION
	:	
RICHARD ALLEN MATHIS,	:	
	:	
Defendant.	:	

FILED
1998 FEB 12 P 1:44
DEPUTY CLERK
BY
DISTRICT COURT
MUSCATINE COUNTY, IOWA

COMES NOW, James Kivi as Prosecuting Attorney, and in the name and by the authority of the State of Iowa accuses RICHARD ALLEN MATHIS of the crime of Burglary in the Second Degree committed as follows:

The said RICHARD ALLEN MATHIS on or about the 9th day of June, 1998, in the County of Muscatine and State of Iowa did unlawfully and willfully break and enter a garage owned by Robert Drawbaugh with the intent to commit a theft therein in violation of section 713.5 of the Iowa Criminal Code.

A TRUE INFORMATION

James Kivi
Prosecuting Attorney

I have made a full and careful investigation of the facts upon which this information is based and have determined under the authority of section 13.4 of the Code of Iowa and pursuant to rule 5(1) of the Rules of Criminal Procedure that a criminal prosecution is warranted in this matter.

James Kivi
Assistant Attorney General

GOVERNMENT EXHIBIT 2

On the 12 day of Feb., 1991, I find that the evidence contained in the within Trial Information and Minutes of Evidence, if unexplained, would _____ warrant a conviction by the trial jury, and being satisfied from the showing made herein that this case should _____ be prosecuted by Trial Information the same is _____ approved.

_____ Clerk of Court shall issue an arrest warrant.

_____ Clerk of Court shall issue a summons for Defendant to Appear.

_____ Bond is set in the amount of $_____.

_____ Bond may be unsecured.

_____ Bond must be cash.

_____ 10% cash may be posted.

✓ Bond previously set shall continue.

_____ Defendant is released on personal recognizance.

JUDGE, 7th JUDICIAL DISTRICT
STATE OF IOWA

Name of Witnesses:

Robert Drawbaugh
Mark Wallace
C.J. Ryan
Larry Murdock

by	Year	COURT MINUTES
	91	Defendant appeared in person and with Atty. R. Hohenadel; State appeared by James Kivi. The Court is in receipt of a presentence investigation report which has been received and reviewed by counsel. Pursuant to the provisions of Section 713.5, the Code, and Sections 902.3 and 902.9 of the Iowa Code, defendant is hereby sentenced to serve a term of ten years confinement and is committed to the custody of the Director of the Iowa Department of Corrections. The Iowa Medical Classification Center at Oakdale, Iowa, is designated as the place of reception for defendant and the Sheriff of Muscatine County is directed to transfer defendant's temporary custody to that institution. Appeal bond is fixed at $10,000; defendant advised of his right to appeal. Defendant to pay costs of this action and court-appointed attorney fees. Defendant to recieve credit for time served in connection with this case. Code: 579.8Q R K. Stohr ,JUDGE

IN THE IOWA DISTRICT COURT FOR MUSCATINE COUNTY

STATE OF IOWA,	:	CRIMINAL NO. 2179-291
Plaintiff,	:	
vs.	:	TRIAL INFORMATION
RICHARD ALLEN MATHIS,	:	
Defendant.	:	

FILED
99 FEB 12 P 1:45
DONNA L. FLEMING, CLERK
BY
DISTRICT COURT
MUSCATINE CO., IOWA

COMES NOW, James Kivi as Prosecuting Attorney, and in the name and by the authority of the State of Iowa accuses RICHARD ALLEN MATHIS of the crime of Burglary in the Second Degree committed as follows:

The said RICHARD ALLEN MATHIS on or about the 9th day of July, 1998, in the County of Muscatine and State of Iowa did unlawfully and willfully break and enter a garage owned by Bob Minder with the intent to commit a theft therein in violation of section 713.5 of the Iowa Criminal Code.

A TRUE INFORMATION.

James Kivi
Prosecuting Attorney

I have made a full and careful investigation of the facts upon which this information is based and have determined under the authority of section 13.4 of the Code of Iowa and pursuant to rule 5(1) of the Rules of Criminal Procedure that a criminal prosecution is warranted in this matter.

James Kivi
Assistant Attorney General

GOVERNMENT EXHIBIT

On the 12 day of Feb., 1991, I find that the evidence contained in the within Trial Information and Minutes of Evidence, if unexplained, would _____ warrant a conviction by the trial jury, and being satisfied from the showing made herein that this case should _____ be prosecuted by Trial Information the same is _____ approved.

_____ Clerk of Court shall issue an arrest warrant.

_____ Clerk of Court shall issue a summons for Defendant to Appear.

_____ Bond is set in the amount of $_____.

_____ Bond may be unsecured.

_____ Bond must be cash.

_____ 10% cash may be posted.

✓ Bond previously set shall continue.

_____ Defendant is released on personal recognizance.

JUDGE, 7th JUDICIAL DISTRICT
STATE OF IOWA

Name of Witnesses:

Bob Minder
Mark Wallace
C.J. Ryan
Larry Murdock

Month	Day	Year	COURT MINUTES
May	24	91	Defendant appeared personally and with Atty. R. Hohenadel; State appeared by James Kivi. The Court is in receipt of a presentence investigation report, which has been reviewed by counsel. Pursuant to the provisions of Section 713.5, the Code, and Sections 902.3 add 902.9, the Code, defendant is hereby sentenced to serve a term of 10 years confinement and is committed to the custody of the Director of the Iowa Department of Corrections. The Iowa Medical & Classification Center at Oakdale, Iowa, is designated as the place of reception for defendant and the Sheriff of Muscatine County is directed to transfer defendant's temporary custody to that institution. Defendant to receive credit for time served in connection with this case. Defendant ordered to pay costs, attorney fees and and restitution. Appeal bond fixed at $10,000; defendant advised of his rights. Costs: 110.00 R.K. Stolz, JUDGE

J

IN THE IOWA DISTRICT COURT FOR MUSCATINE COUNTY

STATE OF IOWA,	:	CRIMINAL NO. FECR 018129
Plaintiff,	:	
vs.	:	TRIAL INFORMATION
RICHARD ALLEN MATHIS,	:	
Defendant.	:	

FILED
1998 FEB 12 P 1:45
CLERK DISTRICT COURT
MUSCATINE CO. IOWA
BY

COMES NOW, James Kivi as Prosecuting Attorney, and in the name and by the authority of the State of Iowa accuses RICHARD ALLEN MATHIS of the crime of Burglary in the Second Degree committed as follows:

The said RICHARD ALLEN MATHIS on or about the 2nd day of August, 1998 in the County of Muscatine and State of Iowa did unlawfully and willfully break and enter a machine shed belonging to Warren McIntire with the intent to commit a theft therein in violation of section 713.5 of the Iowa Criminal Code.

A TRUE INFORMATION

James Kivi
Prosecuting Attorney

I have made a full and careful investigation of the facts upon which this information is based and have determined under the authority of section 13.4 of the Code of Iowa and pursuant to rule 5(1) of the Rules of Criminal Procedure that a criminal prosecution is warranted in this matter.

James Kivi
Assistant Attorney General

GOVERNMENT EXHIBIT 4

On the 12 day of Feb., 1991, I find that the evidence contained in the within Trial Information and Minutes of Evidence, if unexplained, would _____ warrant a conviction by the trial jury, and being satisfied from the showing made herein that this case should _____ be prosecuted by Trial Information the same is _____ approved.

_____ Clerk of Court shall issue an arrest warrant.

_____ Clerk of Court shall issue a summons for Defendant to Appear.

_____ Bond is set in the amount of $_____.

_____ Bond may be unsecured.

_____ Bond must be cash.

_____ 10% cash may be posted.

✓ Bond previously set shall continue.

_____ Defendant is released on personal recognizance.

J L Burns
JUDGE, 7th JUDICIAL DISTRICT
STATE OF IOWA

Name of Witnesses:

Warren McIntire
Mark Wallace
C.J. Ryan
Larry Murdock

District Court Calendar, Muscatine County, Iowa Case No. 2181-291

Docket No. 15 Page 466

PARTIES	ATTORNEYS
STATE OF IOWA VS. Richard Allen Mathis	

CAUSE OF ACTION -

Month	Day	Year	COURT MINUTES
May	7,	1991	Trial in this matter commenced May 6, 1991, with the State represented at all times by Assistant Attorney General James Kivi and the Defendant present and represented by Attorney Randy Hohenadel. A jury was selected and sworn, testimony of both sides presented, closing summations given by the attorneys, instructions read by the Court, and deliberations commenced. The jury returned the following verdict on May 7, 1991: We, the jury, find the Defendant, Richard Allen Mathis, guilty of Burglary in the Second Degree in case no. 2181 (McIntire). The Court orders a presentence investigation. Sentencing is set for May 24, 1991, at 9 a.m. Bond remains as previously set.
May	24	91	Defendant appeared personally with Atty. R. Hohenadel; State appeared by James Kivi. The Court is in receipt of a presentence investigation report which has reviewed by counsel. Pursuant to the provisions of Section 713.5, the Code, and Sections 902.3 and 902.9, the Code, defendant is hereby sentenced to serve a term of ten years confinement and is committed to the custody of the Director of the Iowa Department of Corrections. The Iowa Medical and Classification Center at Oakdale, Iowa, is designated as the place of reception for defendant, and the Sheriff of Muscatine County is directed to transfer defendant's temporary custody to that institution. This sentence is to run consecutive to sentence imposed in Case No. 2179-291. Defendant to received credit for time served in connection with this case and to pay restitution, costs and attorney fees. Appeal bond fixed at $10,000; defendant advised of his right to appeal. Costs: 110.00 J R Burns JUDGE R K Stolte, JUDGE

IN THE IOWA DISTRICT COURT FOR MUSCATINE COUNTY

STATE OF IOWA,

Plaintiff,

vs.

RICHARD ALLEN MATHIS,

Defendant.

CRIMINAL NO. 2178-291

TRIAL INFORMATION

FILED
1991 FEB 12 P 1:45
DONALD E. [illegible], CLERK
BY
DEPUTY
DISTRICT COURT
MUSCATINE CO., IOWA

COMES NOW, James Kivi as Prosecuting Attorney, and in the name and by the authority of the State of Iowa accuses RICHARD ALLEN MATHIS of t e crime of Burglary in the Second Degree committed as follows:

The said RICHARD ALLEN MATHIS on or about the 17th day of June, 1991, in the County of Muscatine and State of Iowa did unlawfully and willfully break and enter a storage shed belonging to Bill Bartenhagen with the intention to commit a theft therein in violation of section 713.5 of the Iowa Criminal Code.

A TRUE INFORMATION

James Kivi
Prosecuting Attorney

I have made a full and careful investigation of the facts upon which this information is based and have determined under the authority of section 13.4 of the Code of Iowa and pursuant to rule 5(1) of the Rules of Criminal Procedure that a criminal prosecution is warranted in this matter.

James Kivi
Assistant Attorney General

GOVERNMENT EXHIBIT 5

On the 12 day of Feb., 1991, I find that the evidence contained in the within Trial Information and Minutes of Evidence, if unexplained, would _____ warrant a conviction by the trial jury, and being satisfied from the showing made herein that this case should _____ be prosecuted by Trial Information the same is _____ approved.

_____ Clerk of Court shall issue an arrest warrant.

_____ Clerk of Court shall issue a summons for Defendant to Appear.

_____ Bond is set in the amount of $_____.

_____ Bond may be unsecured.

_____ Bond must be cash.

_____ 10% cash may be posted.

✓ Bond previously set shall continue.

_____ Defendant is released on personal recognizance.

J L Burns
JUDGE, 7th JUDICIAL DISTRICT
STATE OF IOWA

Name of Witnesses:

Bill Bartenhagen
Mark Wallace
C.J. Ryan
Larry Murdock

Month	Day	Year	COURT MINUTES
May	24	91	Defendant appeared personally and with Atty. R. Hohenadel; State appeared by James Kivi. The Court is in receipt of a presentence investigation report which has been reviewed by counsel. Pursuant to the provisions of Section 713.5, the Code, and Sections 902.3 and 902.9, the Code, defendant is hereby sentenced to serve a term of 10 years confinement and is commited to the custody of the Director of the Iowa Department of Corrections. The Iowa Medical and Classification Center at Oakdale, Iowa, is designated as the place of reception for defendant and the Sheriff of Muscatine County is directed to transfer defendant's temporary custody to that institution. This sentence is to run consecutive to sentence in Case No. 2174-191. Defendant ordered to pay costs and court-appointed attorney fees. Appeal bond fixed at $10,000; defendant advised of his right to appeal. Defendant to receive credit for time served in Muscatine County Jail in connection with this case. Costs: 126.00 R.K. Stoby, JUDGE